

Claim in time A clean break Energy efficient?



How long can you leave it before you make a claim? Solicitor Will Bates looks at the different limitation periods and the pitfalls of leaving it too late.

Don't leave it too late

You may already be aware (and you certainly will be if you are a John Grisham fan) that the law requires legal claims to be brought within a certain period of time.

The period a claimant has to issue a claim is known as the "limitation period". If you, as the potential claimant, do not issue the claim before this period ends, the defendant will have a complete defence to the claim. Limitation periods were introduced on public policy grounds, on the basis that nobody should have the threat of legal proceedings hanging over them indefinitely; claimants should also be encouraged to bring claims as soon as possible, particularly as evidence will often become less reliable and more difficult to obtain as time passes.



Will has experience assisting with Commercial Litigation matters involving: contractual disputes, construction disputes, debt recovery, professional negligence, contentious probate, harassment, defamation, insolvency (individual and corporate) and IP disputes. In the last



year Will has had a number of matters involving passing off claims. He is also regularly involved in a wide variety of football disputes, often acting both for and against County FAs.

Will's advice always includes consideration of whether alternative dispute resolution is suitable and he has experience of assisting clients through mediation.

Will assists the Head of Commercial Litigation, Philip Edmondson, in acting for a broad range of clients, including: insurers, national and international corporates, entrepreneurs, large family estates, insolvency practitioners (and those facing claims by them), charities, the Premier League, Leeds United FC, Harrogate Town FC, the Ryman League and a number of other sporting bodies and clubs.

He also acts for the Solicitors Indemnity Fund, advising them on recovery cases involving solicitors' negligence claims and run-off matters.



Limitation periods are a complex and highly technical area of law. The limitation period in any case will depend on the circumstances in the case and on what cause of action the claim is based. Different causes of action have different limitation periods, prescribed by legislation. Many common causes of action have a six-year limitation period. However, some limitation periods are much shorter and, for example, a claim for defamation must be issued within one year of the date on which the cause of action arose.

Despite the above, there are provisions to protect potential claimants who were not aware that they had a potential claim until a later date. For example, a potential claimant has six years to bring a claim for professional negligence from the date on which the cause of action accrued. However, if they only acquired the knowledge required for bringing the action at a later date, they will have three years from the date on which they acquired that knowledge to issue a claim (subject as well to a 15 year long-stop).

A key warning is that as a potential claimant you may acquire the knowledge required for bringing an action much sooner than you expect. The required knowledge to commence time running for reckoning the limitation period can include "constructive knowledge" (i.e. the knowledge which you might reasonably have been expected to acquire from facts observable or ascertainable by you and also from facts ascertainable by you with the help of appropriate expert advice). If you become aware of facts or circumstances which may give rise to a

potential claim but fail to investigate it further, any claim you may have had could become time barred. Therefore, it pays to seek independent legal advice as soon as possible.

A potential claimant cannot, for example, discover an issue which arose during their purchase of a property and simply wait until they wish to sell the property to deal with the issue. Limitation periods commence as soon as the cause of action accrues; the total loss which is suffered later does not always need to be ascertained to commence time running.

The overriding point is that if you are aware of factual circumstances that may give you a potential claim, it is important to act as soon as possible. Independent legal advice should be sought as to when the cause of action arose, the limitation period applicable to the potential claim and the likely date by which the potential claim must be issued. It should not be left to the last minute to issue court proceedings as that can place you at a disadvantage. In the worst-case scenario, valid claims can no longer be brought simply because the potential claimant delayed seeking legal advice.

We are always happy to help if you believe there are circumstances which may give you a potential claim.

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Marching On Together

I wrote this article only a few days ago and already we are overshadowed by the threat from the Coronavirus. Our thoughts are with everyone who may suffer from the consequences of the outbreak. Health comes before everything and puts everyday life into a true perspective.

Please be assured that, no matter what the circumstances, McCormicks will continue to provide the necessary service to our clients, whatever the challenges.

Now to the article!

At the beginning of the year, I was asked by a legal magazine about my hopes and aspirations for 2020.

As someone heavily involved in English football, the answer was relatively simple: I would really like 2020 to be the year that our long-standing friends and clients, Leeds United, finally return to the Premier League after 16 years.

As the season continues to unfold, nothing is certain except that, as well as being great for football, this would be a major boost for the whole region.

Even nearer to home,

we wish another of our clients, Harrogate Town FC every success in their quest for promotion from the National League to the English Football League (EFL).

The ramifications of Brexit will continue to occupy the legal community and the McCormicks team is already seeing this in football, where the free movement of players from outside of the UK to come and play here is a key topic of discussion.

The transition to life outside the EU will undoubtedly throw up many other legal quandaries for our profession, both

for businesses and individuals. We are all working hard to keep abreast of the latest developments as they emerge and we will be pleased to work with our clients as they negotiate this new landscape.

Whilst some uncertainty exists regarding any future public events, in the traditional British spirit of optimism, we shall continue to look forward to some great events later in the year. They include the Great Yorkshire Show and the Theakstons Old Peculier Crime Writing Festival, both of which we support and for which we handle the legal work. Then, November brings

on the 28th Yorkshire Young Achievers Awards and we are already gearing up for another great event.

It is certainly looking set to be another year of "unknowns" and their related challenges but, as always, we will be with you all the way!

Peter McCormick OBE



A team of our lawyers has completed a successful sale of the majority shareholding of League One football club, Wycombe Wanderers.

Praise after sale of football club

The successful sale was the culmination of six months' work by the firm on behalf of the club, Wycombe Wanderers Supporters Group Limited and Frank Adams Legacy Limited, a subsidiary of the Trust, which owns the football stadium

The transaction was completed by James Towler and Emily Steed of our Corporate and Commercial department and Heather Roberts, head of Commercial Property.

James, who heads the Commercial team, said: "The transaction involved the investor Feliciana EFL Limited, a company owned by

Rob Couhig and his family, taking a 75 per cent stake in the Club at completion, which enabled our clients to repay all debt in their companies. Feliciana have also committed to provide financial facilities to the Club to support its future activities.



"The deal means that our clients are in good shape for the future. If they continue their run of success in League One, they have a good chance of promotion to the Championship at the end of this season."

Trevor Stroud, who, as Chairman of both the



Football Club and the Supporters Trust, led the negotiations with Feliciana, said: "We are deeply indebted to James Towler, Emily Steed and Heather Roberts at McCormicks, Solicitors, who advised us throughout what proved to be a complex



transaction. Their deep knowledge of the legal intricacies of the football world was of enormous help to us during the extended negotiations, and they were a pleasure to deal with. Their advice was always clear, pragmatic and constructive, and enabled us all to focus without distraction on the key issues which needed to be resolved. We really appreciate the way they handled the transaction for us."

The practice acts on behalf of a number of clubs, including Leeds United, and is currently working on a number of other football-related instructions.

Are settlement agreements a common sense arrangement when employers and employees need to part company or are they overused? Our Head of Employment, Jain Jenkins, takes a look at the arguments.

clean break?

Where would employment lawyers be without the commonor-garden settlement agreement?

It would be easy to perceive them as an instrument used by employment lawyers to bolster their fee income, with lawyers often being responsible for the drafting on behalf of employers, and independent lawyers being instructed to sign them off on behalf of the departing employee. The contribution to the employee's legal costs is often hard fought-over in any negotiations.

The settlement agreement is one of the few ways an employee can contract out of their rights to bring a claim in the employment tribunal. There are prescriptive drafting requirements, and these are often added to with numerous clauses covering what happens on termination and afterwards. The agreements may be used as part of the



protected conversation route where there might be performance issues at work for example, and to deal with the outcome of without prejudice negotiations in other disputes.

Rather than being a way for lawyers to add to their bills, there are advantages which can make settlement agreements an attractive way to ensure an agreed outcome. They are:

- A neat and sensible way of exiting an employee where there are concerns; it can be a win-win for both.
- It brings an issue to an end and frees up management time.

- There is no legal liability going forward.
- The financial outcome is certain.
- As part of any negotiations, an employer can update restrictive covenants and confidentiality obligations, for example.
- Employers can get themselves out of a pickle when things have perhaps not been done by the book, though we must, of course, recognise how these agreements might have been abused in the past with sexual misconduct claims.
- There are, perhaps, also

disadvantages, or at least things employers should think about, before going down the settlement agreement route:

- It might become an easy option. Managers get used to having them in the background and become lazy when dealing with workplace issues. Employers may then get a reputation as a settling organisation.
- A settlement agreement requires a lawyer or other appropriate representative on the other side, which can lead to long drawn out negotiations.

- A settlement may not be reached if the employer or employee have unrealistic expectations. What do we do then?
- The process might subsequently be challenged so employers should make sure they get proper advice on the do's and don'ts of without prejudice negotiations/protected conversations.

Reflecting on these pros and cons, settlement agreements are a useful tool for both employer and employee. Indeed, there is no reason why employees cannot suggest them if they are looking for a negotiated outcome. They should not be used by management to abdicate their HR responsibilities. It might be said that they are overused in some obvious redundancy situations, but at the end of the day a settlement agreement draws a line and should mean no future claims.

lain Jenkins, Head of Employment, advises on all areas of contentious and non-contentious employment matters including:

- Settlement agreements and negotiated exits
- Directors and boardroom disputes
- Claims for unfair/ wrongf<u>ul dismissal</u>, discrimination and whistleblowing in the Employment Tribunal

Drafting and

- negotiating contracts of employment and service agreements
- Advising on grievance and disciplinary matters and the termination of employment
- ▶ TUPE advice and advising on employment aspects of corporate and property transactions
- Advising on the implementation

and enforcement of restrictive covenants and confidentiality obligations

- Trade union issues, redundancy and restructuring
- Partnership matters and disputes

lain has advised businesses across a range of sectors including technology, manufacturing, financial services, recruitment, transport and logistics

and health and social

lain is a CEDR accredited mediator and an accredited workplace mediator. He can also be instructed as an independent investigator in relation to employment issues. He also advises on in employment and commercial work, including compliance and data breaches.



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Head of Commercial Property Heather Roberts discusses the continued tightening of the energy efficiency regime for residential and commercial properties as part of the fight against climate change and, importantly, the preservation of asset value.

Energy efficient?

If you are a landlord of residential property 1 April 2020 is a key deadline for you. If your property does not reach the minimum standard of an E rating under an Energy Performance Certificate (EPC) from that date, then you could be subject to a fine.

April 2020 is the second date in ensuring energy ratings compliance within the residential sector. April 2018 was the previous key date for a minimum of an E rating on new lettings; this 2020 date applies to existing tenancies.

Energy efficiency should affect us all. We have some very poor-quality housing and mixed commercial stock in this country generally and certainly from an energy perspective. Poor insulation means burning more fossil fuels to keep warm, fuelling (pardon the pun) pollution and global warming. Moreover, it is just plain wasteful, and we cannot continue to squander resources any more, hence the regime.

re-evaluated to rating E as a minimum. Then speak nicely to your tenants about going in to make improvements. They should thank you in the end if such works make their energy bills lower. Make sure you comply to the letter, however, with the landlord's covenants in the tenancies you have granted.

If you are landlord of commercial property then, similar to residential, new lettings and renewals of commercial properties have not been permitted with less than an E rating since April 2018.

However, April 2023 is the second date whereby all commercial properties must meet the minimum E rating. Basically, landlords cannot continue to let sub-standard property without a legitimate reason as permitted by the MEES Regulations. All works have to be done by the landlords themselves. Today the following percentages of commercial properties

The Meaning of MEES*

have these ratings:

Grade E = 17%

Grade F = 9%

Grade G = 10%

so you can see there is room for improvement.

What should you do? Do an EPC portfolio audit now and consider what works need to be done. Consider the issues as for residential above but also what an impact poor energy performance could have on rent reviews, ability to let going forward and secure finance against properties. Also bear in mind that legislation will continue to press for higher efficiency standards so consider how far you can upgrade. Key property investors like Legal & General are pushing for C ratings across their portfolio and incentivising their managers to achieve this. Ultimately peer pressure in the market will create competition. Better landlords will do better.

*(Minimum Energy Efficiency Standards)

Our congratulations to Harrogate Borough Council's Chief Executive, Wallace Sampson, on being awarded an OBE in the New Year Honours.

Well done Wallace

Mr Sampson gained the OBE in recognition of his services to business and the community in Yorkshire.

He joined Harrogate Borough Council in 2008 and has worked in local government for more than 35 years, including in Doncaster, Chesterfield, Kirklees and Bradford.

In addition to his Borough Council role, Wallace chairs the Harrogate district Public Services

Leadership Board and is a member of the North Yorkshire Safeguarding Children's Partnership Executive Board. He is ead chief executive for the Leeds City Region LEP 'clean energy' priority and lead ocal authority chief executive in Yorkshire and Humber for energy and low carbon.



Head of Employment Iain Jenkins has introduced a new software package designed to make HR record-keeping simpler.

Making HR simple

He said: "We all know that HR involves lots of important record keeping which might be done on an ad hoc basis with a mix of paper, Excel spreadsheets and so on. It can cause problems if key dates are missed, holidays not properly recorded etc.

"We can now offer a new HR software package to solve these problems and dramatically reduce the time spent on admin.

"Holiday, working time, expenses, appraisals, policy documents and much more are all part of our system and like all good software packages, you can use it from your mobile. It is safe and secure and properly supported with employee access to certain areas."

To find out more, contact lain on 01423 530630 or at i.jenkins@mccormicks-solicitors.com

What should you

do? If you have a low rating of F or below then check your EPC's recommendation report or speak to your energy assessor about what upgrades are required to enable the property to be



Heather Roberts is Head of Commercial Property and is a specialist with wide experience of acting for investors, developers, landlords, tenants and banks.

She has specific experience of investment, development and asset management work and works closely, in respect of the latter, with the Property Litigation team. Development work has more recently comprised significant local residential schemes.

She regularly advises investor and SME clients on their portfolio purchases and management. Clients range from private investors and funds through to landed estates and charities. She also advises occupational tenants, with a particular specialism in retail, having previously acted for a major shopping centre client and numerous high street retailers.

April is often the time for new employment legislation to come into effect, and this year is no different with some significant changes taking place on 6 April 2020. Here are some key areas to consider:

Contracts of Employment

For a number of decades, employers have been required to provide basic terms of employment (written particulars) as set out in section 1 of the Employment Rights Act 1996. This is often done as part of the contract of employment. Until now employers have had time to provide the particulars following start of employment and where the employment is due to last for more than one month. In addition, the particulars were only required to be given to employees and not all workers.

The changes are as follows:

- The particulars should now be given on or before the first day of work and should be provided to all workers not just employees, who start work on or after 6 April 2020. Thankfully, there is no requirement to re-issue contracts to existing staff. An interesting development is that particulars should now also be given to short-term employees or workers.
- Additional information will be required, and it will be important to amend existing templates to include the days of the week a worker is required to work and any variations in hours and days; entitlement to other paid leave (not just holiday pay) which might include maternity and adoption leave; other benefits provided in addition to remuneration; details of any probationary period; and details of any training provided by the employer.

Certain information can be given within two months of commencement and in a separate document including in relation to pensions, collective agreements, training entitlement (although details of compulsory training and any training the worker has to pay for must be included in the initial statement) and disciplinary and grievance procedures.

- The worker can also be referred to another source, for example a company handbook, for certain information, including in relation to incapacity and sick pay, entitlement to other paid leave (other than holiday pay), pensions and pension schemes and training entitlement.
- It is important to issue the statutory information when your worker/employee starts with you. Your HR systems should generate a reminder to do so. It is generally preferable to issue contracts of employment in any event before the commencement of employment and as part of the offer. Failure to do so might mean that any restrictive covenants subsequently introduced are unenforceable and with the new legislation it will now also be a breach of the statutory requirements.
- You should be clear about the definition of an employee and worker, and if you use agency staff, the agency should ensure that statements are provided.

Spring into action



Changes to IR35

Currently under IR35, where an individual performs services for a client through a personal service company (intermediary) it is the intermediary's responsibility to determine whether IR35 applies.

From 6 April 2020, changes to IR35 rules will be implemented in the private sector and will largely mirror changes which took effect in the public sector in 2017. The onus will shift from the personal service company to the end user to make a determination about the nature of the relationship, and whether or not the individual providing the service should in fact be considered an employee with the implications which follow for PAYE and National Insurance.

Holiday Pay Reference Period

Holiday pay can be complicated, particularly where workers have variable hours and variable rates of pay. Currently the reference period for calculating holiday pay is 12 weeks.

With the increase in casual workers and variable working patterns, it was felt that it would be more appropriate and give a fairer picture for the holiday pay reference period to be increased from 12 weeks to 52. From 6 April 2020, employers will be required to consider the previous 52 weeks where a worker has worked and received pay, discounting any weeks not worked or where no pay was received, when calculating the average weekly pay for the purposes of holiday pay.

Parental Bereavement Leave

We have published an article on this topic and the introduction of the regulations for bereavement leave and bereavement pay. The entitlement to the leave is reasonably straightforward but the notice requirements are possibly unnecessarily complex. You can see this at www.mccormicks-solicitors.com.

Agency Workers

Under the Agency Workers Regulations 2010, agency workers should receive the same pay and basic working conditions as direct recruits once 12 weeks of continuous service have been completed. There was an exemption where agency workers are employed under a contract of employment with a temporary worker agency and are paid by the agency for periods between assignments.

The rules are now changing and once an agency worker has satisfied the 12-week qualifying period they will be entitled to equal pay to workers you engage directly.

In addition, from 6 April 2020 all agency workseekers must be provided with a statement setting out the terms under which they will undertake new work.

If you have any questions about the above then please contact Head of Employment lain Jenkins on 01423 530630 or at i.jenkins@mccormicks-solicitors.com The firm is delighted to have won two more accolades since our last issue of the Briefing.

Additional awards

The firm is delighted to have won two more accolades since our last issue of the Briefing.

Senior Partner Peter McCormick has been nominated once more as one of the world's leading practitioners in Sports and Entertainment law for 2019 by Who's Who Legal.

In addition, the practice has been named as Best Commercial Law Firm 2020 - North Yorkshire in the SME News 2020 Legal Awards.

Thirty students at Henshaws Specialist College in Harrogate are to receive new iPads, thanks to a grant from the Yorkshire Young Achievers Foundation.

Foundation helps students access technology

Students at the college, all of whom have special educational needs and disabilities, use the devices for everything from learning to being able to communicate with others but Henshaws needed more to help additional students with learning and development.

Henshaws College Principal Adrian Sugden said: "As smart technology becomes more mainstream, affordable and user friendly, it creates an exciting opportunity to support people with disabilities to develop real, practical and transferable skills. We constantly seek new ways to enable our students to become more independent and this grant means we will have 13 new iPads that 30 students can use for both learning and pleasure."

Foundation Trustee Martin Gerrard said: "As a long-term supporter of both the Yorkshire Young Achievers Foundation and Henshaws, I have seen the amazing work both charities do so I was delighted to be able to present this grant."



l long-term supporter of both charities Adam Moore, Assistive hnology Assistant at Henshaws Amanda Martin, Henshaws Specialist lege Principal Adrian Sugden, Yorkshire Young Achievers Foundation stee Martin Gerrard and Henshaws Mis Manager Luke Lengiewicz. Huge congratulations are due to three of our previous winners of the Yorkshire Young Achievers Awards who have made their mark yet again.

Winners all the way

First to score was our long-standing friend and winner of both the Achievement in the Arts Award in 2001 and the Special Award, to mark his unstinting support, in 2014. Kelvin was crowned the winner of the BBC's popular Strictly Come Dancing in December after stepping in when another contestant, Jamie Laing, was injured early in the competition. Partnered with Oti Mabuse, the dancers dropped just two points on the leaderboard in the final after performing three dances.

Two other winners had their achievements recognised in the New Year's Honour. Soprano Lizzie Jones, who won Personality of the Year in 2017, was awarded an MBE while 2007 Youngster of the Year and 2014 Personality of the Year Jack Marshall was awarded a BEM.

Lizzie was recognised for her work in founding the Danny Jones Defibrillator Fund after her husband died during a Rugby League match and was found to have had an undiagnosed heart condition. She has also organised a long-term screening programme for Rugby League players.

Jack, who is now 21 and has Moebius syndrome, was also recognised for his fundraising efforts, which have included challenges such as walking over the Humber bridge, sponsored runs and scaling Ben Nevis which took more than 19 hours to complete. He has also campaigned for the rights of disabled children and has spoken in the House of Lords and House of Commons.







BOOK EARLY!

It is never too early to book your table for the Yorkshire Young Achievers Awards. Tables for the 28th Yorkshire Young Achievers Awards on Thursday 19 November are on sale so please book now to ensure you can join us to celebrate the successes of some fantastic young people.

Simply visit the website at **www.yorkshireyoungachievers.co.uk** for all the details or call Sonia Jones on **01423 530630**.

If you would like to receive information about advertising in the programme, please email **info@yorkshireyoungachievers.co.uk**.

Our long-term Foundation Ambassador and previous Award winner Jessica Mayho has brought us up on to date on her progress since she became British Athletics Champion hammer thrower last autumn.

Reaping rewards

In November she headed out for a tenday training camp in Portugal where her coach is based, having completed six weeks of intense conditioning, including gym, track, throwing, running and yoga, to ensure she was fit enough for the rest of the winter training.

She said: "The November training camp was jam packed, but I managed to get time to head into my coach's school along with other Portuguese and Spanish current and ex athletes and present to the school's English students 'my route through sport'. As my Portuguese language is still questionable, I was glad the students' English was really good!

"I also had a couple of training partners on my November camp which was amazing. Kati is Estonian and is a 68-metre throwing with aspirations of making Tokyo Olympics 2020. We met back in March at my first GB international competition and stayed in touch since. It was really good to train together, to push one another and get some hard sessions in the bank.'

Jess's progress took a backward step in December when she was struck down with both Novovirus and a heavy cold, losing four kilogrammes in just two days. She believes she underestimated the impact it would have on her training, feeling as though she was trying to catch up for the rest of the month.

She said: "In January I was putting in the work but honestly I was just finding it hard to be motivated. The track sessions when it's windy, rainy and I was the only person out there; the throwing sessions when I would be trudging through the mud with six different weights of hammers to get to my throwing circle and have to start de-icing it because it was frozen; to the weights sessions when my body was sore from the previous day's training and I would struggle to hit the weights set. Then I felt guilty for these 'first world



problems' when other people have got life way harder! I knew I was in a bit of a rut and reached out to my parents and also managed to sit down with a sports psychologist. Looking back on that period I can now accept it's normal and ok to have felt like that and I guess to be proud of myself for not wallowing but reaching out and making some changes."

She did her first competition of 2020 in Portugal in February and threw her second furthest competition throw - 65.22 metres. She said: "I was really

winter had been and, without sounding arrogant, knowing I deserved it! So I guess all in all winter training has been challenging, it has really tested how much I want to succeed but also reinforced to me I have a strong support network and I am grateful to you all for the continuous support and belief you have in me. I know I need to trust the training programme and the process and hopefully will reap more benefits in the coming months."

chuffed with myself,

knowing how tough

a strong start but also

OUR **EXPERTISE**

McCormicks offers the full portfolio of legal services to all forms of organisation including businesses, charities and sporting bodies, together with private individuals. The firm offers expertise in all areas of corporate and commercial work whilst maintaining a commitment to the personal client in areas such as rural property, tax, trusts, probate, family matters and crime.



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